

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-227-C -- ORDER NO. 2007-804
NOVEMBER 14, 2007

Application of Hargray Wireless, LLC)	ORDER DESIGNATING HARGRAY
for Designation as an Eligible)	WIRELESS, LLC AS AN ELIGIBLE
Telecommunications Carrier under)	TELECOMMUNICATIONS CARRIER
47 U.S.C. 214 (e)(2))	

Introduction And Jurisdiction Of The Commission

This matter is before the Public Service Commission of South Carolina (“the Commission”) on the Application of Hargray Wireless, LLC (“Hargray”) for designation as an eligible telecommunications carrier (“ETC”) under 47 U.S.C. § 214(e)(2). Hargray filed its Application on July 24, 2003, and amended its Application on June 20, 2006.

South Carolina Telephone Coalition (“SCTC”) and United Telephone Company of the Carolinas d/b/a Embarq (“Embarq”)¹ intervened.² ORS was a party pursuant to statute. The public hearing was held at the Commission offices on June 28, 2007, with the Honorable G. O’Neal Hamilton, Chairman, presiding. At the hearing, William W. Jones, Esquire, and David LaFuria, Esquire, represented Hargray. John Bowen, Esquire, and Margaret Fox, Esquire,

¹ Embarq filed a motion to intervene out of time on June 5, 2007. The Commission granted the motion on July 2, 2007, in Order No. 2007-438.

² MCI Communications, Inc. and Verizon Communications, Inc. also intervened but did not participate in the hearing.

represented the SCTC. Scott Elliott, Esquire, and H. Edward Phillips, Esquire, represented Embarq. C. Lessie Hammonds, Esquire, and Shealy Boland Reibold, Esquire, represented ORS. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”³

Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁴ Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁵ By this Application, Hargray seeks authorization to receive support from the federal Universal Service Fund (“USF”) for use within Hargray’s licensed service area in South Carolina. Pursuant to Section 47 U.S.C. § 214(e)(2), this Commission has jurisdiction to designate a competitive carrier as an ETC.

Requirements for Designation

The Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁶ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁷

³ 47 U.S.C. § 254(e).

⁴ 47 U.S.C. § 214(e)(1).

⁵ 47 U.S.C. § 214(e)(2).

⁶ *Id.*

⁷ *Id.*

An ETC petition must contain the following: (1) a demonstration of the petitioner's capability and commitment to offer all services that are supported by the USF; (2) a demonstration of the petitioner's capability and commitment to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services"; (3) a description of how the petitioner will "advertise the availability of the [supported] services and the charges therefor using media of general distribution"; and (4) a detailed description of the geographic service area for which it requests an ETC designation from the Commission.⁸

DISCUSSION

Basic Qualifications

Offering the Services Designated for Support.

Hargray has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Hargray is authorized as the C Block Personal Communication Service ("PCS") provider in South Carolina Basic Trading Area ("BTA") No. 410, which covers, in South Carolina, the counties of Beaufort, Hampton, and Jasper.⁹ Hargray states that it currently provides or will provide all the services and functionalities enumerated in section 54.101(a) of the Federal Communications Commission's ("FCC") rules throughout its designated ETC service area in South Carolina, and that it will advertise the availability of those services throughout the designated ETC service area by media

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). *See also North Carolina RSA 3 Cellular Telephone Company*, CC Docket No. 96-45, Order (rel. Aug. 14, 2006) at para. 5, citing "Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act," Public Notice, 12 FCC Rcd 22947, 22948 (1997).

⁹ Hargray Application at pp. 1-2.

of general distribution.¹⁰ Hargray has also committed to make available and advertise low-income discounts under the federal Lifeline and Link-Up programs to qualifying low-income consumers.¹¹

Hargray has further committed to comply with the FCC's rules set forth at 47 C.F.R. Section 54.202 and 54.209,¹² which were recently adopted by this Commission to govern ETC designations on an interim basis.¹³ These commitments include: (1) adherence to the disclosures and practices set forth in the CTIA Consumer Code for Wireless Service; (2) annual reporting of unfulfilled service requests and of complaints per 1,000 handsets; (3) demonstration of ability to function in emergencies and annual reporting of network outages; (4) specific commitments to provide service to requesting customers in the area for which it is designated; and (5) specific commitments to improve its existing network with the use of high-cost support.¹⁴

Hargray has demonstrated that it has at least one rate plan that offers a level of local usage that is comparable to the ILECs where it proposes to be designated. Hargray's "Local Unlimited Plan" costs \$20 per month and provides unlimited local calling within three counties in South Carolina and sixteen counties in Georgia.¹⁵ That rate plan is comparable to ILEC

¹⁰ *Id.* at pp. 3-6. The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

¹¹ *Id.* at p. 6.

¹² See Amendment to Application for Designation as an Eligible Telecommunications Carrier ("2006 Amendment").

¹³ See Commission Order No. 2007-424.

¹⁴ See 2006 Amendment at pp. 1-6; Tr. 17-21.

¹⁵ Tr. 41 at lines 17-22; 2006 Amendment at pp. 6-8.

offerings in the state.¹⁶ No party disputed Hargray's compliance with the local usage requirement.

Offering the Supported Services Using a Carrier's Own Facilities.

Hargray has demonstrated that it satisfies the requirement of Section 214(e)(1)(A) of the federal statute that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.¹⁷ Hargray states that it intends to provide the supported services using its cellular network infrastructure, which includes its "antenna, cell-site tower, trunking, mobile switching, and interconnection facilities."¹⁸ Hargray has also identified several small areas within its proposed ETC service area where it is not authorized by the FCC to provide facilities-based services.¹⁹ In areas where Hargray cannot provision service immediately with its own facilities, Hargray has committed to provide service to requesting customers either through resale of an ILEC's services or through roaming agreements with other wireless carriers.²⁰

On cross examination, Mr. Pence confirmed that Hargray currently has roaming agreements in place with all the other carriers in its area,²¹ and that while ordinary customers pay roaming charges in such areas, those who request service there would have the ability to choose Hargray's rate plans and not pay roaming charges.²²

¹⁶ Tr. 42 at lines 15-22.

¹⁷ 47 U.S.C. § 214(e)(1)(A). Hargray Application at pp. 3-6; Tr. 16 at lines 15-17.

¹⁸ See Hargray Application at 3, 4-8.

¹⁹ See 2006 Amendment at pp. 9-10.

²⁰ See id. at pp. 3-5; Tr. 44 at line 3 - 45 at line 10.

²¹ Tr. 99 at lines 19-20.

²² Tr. 105 at line 19 - 106 at line 1; Tr. 106 at lines 18-24.

Hargray has committed to offer its services in response to all reasonable requests for service pursuant to the process set forth in the FCC's *ETC Report and Order*.²³ Hargray testified that it has a successful record in South Carolina, having operated in the state since 1998, growing its business from a start-up to its current level of 58,000 subscribers.²⁴ The company has a 98% call completion rate, it offers numerous advanced services, and it has a 24/7 hotline for after hours repair service.²⁵ The company has implemented Phase II E-911 service and is prepared to roll out Phase II functionality throughout every area where a PSAP has made a request for service, and is therefore in compliance with 47 C.F.R. § 20.18.²⁶ Hargray's senior management has significant experience operating wireless telephone systems.²⁷

No party introduced credible evidence refuting Hargray's capability and commitment to offer the supported services. The reporting requirements that we have adopted provide the Commission with sufficient annual information to measure a carrier's compliance with these requirements and Hargray has committed to comply with them.²⁸

Advertising Supported Services.

Hargray has committed to the requirements of 47 U.S.C. Section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."²⁹ These methods may include newspaper, magazine, direct mailings, public

²³ See 2006 Amendment at pp. 3-5; see Tr. 19-21, 43. See also *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371, 6381 (2005) ("*ETC Report and Order*").

²⁴ Tr. 45.

²⁵ Tr. 19, 45-46.

²⁶ Tr. 46.

²⁷ Tr. 47.

²⁸ See Commission Order No. 2007-424; Tr. at 54-56.

²⁹ See Hargray Application at p. 6; Tr. 40-41.

exhibits and displays, bill inserts, and telephone directory advertising.³⁰ In addition to its current advertising methods, Hargray has committed to publicizing the availability of Lifeline and Link-Up services by including these services in its future advertising and by reaching out to community health, welfare, and employment offices to provide information to people who are likely to qualify.³¹ Thus, Hargray plans to use advertising to insure that consumers within its designated service area are fully informed of its universal service offering.

Public Interest Analysis

As explained below, we conclude that it is consistent with the public interest, convenience, and necessity to designate Hargray as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon South, as listed in Exhibit B to the Application. We conclude that it is in the public interest to designate Hargray as an ETC in South Carolina in the portion of its requested service area that is served by the rural telephone companies, Hargray Telephone Company, Inc. and Bluffton Telephone Company, Inc., as set forth in Exhibit C to the Application.

We also conclude that it is the public interest to designate Hargray as an ETC in South Carolina in the requested wire centers in the area served by the rural telephone company Embarq, as listed in Exhibit D to the Application. We conclude that Hargray has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural and non-rural consumers.

³⁰ See Hargray Application at p. 6.

³¹ *Id.* at p. 6.

In its evaluation of Hargray's Application, the Commission must determine whether the requested designation is in the public interest.³² In areas served by a non-rural telephone company, the federal statute requires a state commission to designate an additional CETC that meets the requirements of Section 241(e)(1), consistent with the public interest, convenience, and necessity.³³ In areas served by a rural telephone company, the state commission must determine whether the public interest would be served by a grant.³⁴

An analysis of the public interest requires consideration of the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.³⁵ When an ETC applicant seeks designation below the study area of a rural telephone company, a creamskimming analysis is conducted to compare the population density of the wire centers in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.³⁶

We find Hargray's universal service offering will provide a variety of benefits to customers including consumer choice and advantageous service offerings. For instance, universal service support will enable Hargray to construct facilities to improve quality of service and extend telephone service to people who have no choice of telephone provider.³⁷ Hargray has demonstrated that its network is strong in Hilton Head and surrounding coastal areas that are

³² 47 U.S.C. § 214(e)(2); In determining whether the public interest is served in an ETC petition, the Commission also places the burden on the ETC applicant. *See ETC Report and Order, supra*, 20 FCC Rcd at 6390, para. 44.

³³ 47 U.S.C. § 214(e)(2).

³⁴ *Id.*

³⁵ *See* 47 C.F.R. § 54.202(c); *ETC Report and Order*, 20 FCC Rcd. at 6392-95, paras. 48-53.

³⁶ *See id.*

³⁷ Hargray Application at p. 13.

densely populated, but that its network requires significant upgrades in the inland areas, where its signal coverage is not as strong.³⁸

We find that Hargray's ability to expand coverage and improve its service quality will have important health and safety benefits in South Carolina. Hargray's construction plan includes numerous upgrades that will significantly expand its network coverage in high-cost areas within the state.³⁹ Witness DeBardelaben testified that each of the cell site change-outs that Hargray proposes to implement with high-cost support will increase the cell site's effective coverage by 15-25%.⁴⁰ In addition, the company has committed to construct additional cell sites to fill in uncovered areas.⁴¹ We accept Hargray's testimony that its drive tests indicate that no carrier has a high-quality wireless service throughout the proposed ETC service area.⁴² We find that this investment will benefit South Carolina consumers and will provide an efficient way to get coverage out to areas with weak or no coverage.⁴³

With new coverage naturally comes increased access to 911 and E-911 service.⁴⁴ Rural consumers require such services just as much as those in urban areas. The improved 911 and E-911 access that will be delivered as a result of new and improved network coverage is in the public interest in Hargray's proposed ETC service area. We accept Hargray's testimony that its

³⁸ Tr. 16 at lines 18-23; Tr. 96 at line 12 – 97 at line 4. *See also* Exh. 2.

³⁹ We reject SCTC's objection that Hargray's proposed investments will not deliver sufficient new service coverage. SCTC did not offer a witness who is an expert in wireless network design. In contrast to Mr. DeBardelaben, whose testimony described Hargray's network and the manner in which service quality and coverage would be improved through the use of high-cost support, Mr. Brown is not a radiofrequency engineer and has never designed a wireless network. *Compare* Tr. 283-84 *with* Tr. 15-16.

⁴⁰ Tr. 30-31.

⁴¹ *See* Hargray Application at pp. 10-11; 2006 Amendment at pp. 5-6; Hr. Exh. 1 at Appendices A-C; Hr. Exh. 7 at Appendices D-E; Tr. 17 at lines 6-9; Tr. 48 at lines 1-8.

⁴² Tr. 31 at lines 5-14.

⁴³ Tr. 174-76, 185-86.

⁴⁴ Tr. 50 at lines 1-5.

new network coverage in its first year will be “significant,”⁴⁵ that cell site modifications will quickly provide improved coverage,⁴⁶ and that 37 new cell sites proposed in the build plan will deliver new and improved coverage in rural South Carolina.⁴⁷

We accept Hargray’s commitment to use all available support as required by federal law. We also accept Hargray’s initial five-year plan as sufficient to support a grant of this petition. We note that Hargray removed planned investments in an “EV-DO” upgrade in years four and five because those facilities have mixed use between voice and data.⁴⁸ While a “mixed use” investment is an acceptable use of support,⁴⁹ we understand Hargray’s willingness to be cautious in its planning.⁵⁰ We also accept Mr. Pence’s unequivocal testimony that the company will invest all of the support it receives and that it will revise its plan to set forth qualifying investments as required by the Commission.⁵¹ Hargray will be required to update its plans as set forth in the Commission’s new rules, which we expect to adopt in the near future, to include qualifying investments that demonstrate its willingness to invest all available support lawfully.

⁴⁵ Tr. 101 at lines 16-17.

⁴⁶ Tr. 83-84.

⁴⁷ See Hr. Exh. 1 at Appendix B.

⁴⁸ See letter dated June 18, 2007, from William W. Jones, Jr. to Charles L.A. Terreni (“June 18 Letter”); Tr. 58 at lines 7-21.

⁴⁹ *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11322, para. 200 (2001) (“*Fourteenth Report and Order*”) (“Contrary to the arguments of some commenters, use of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used ‘only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’ The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. High- cost loop support is available to rural carriers ‘to maintain existing facilities and make prudent facility upgrades[.]’ Thus, although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services.”) (footnotes omitted).

⁵⁰ Tr. 58, 101-02.

⁵¹ Tr. 102, 106-07.

We reject SCTC's objection that Hargray's proposed construction plan does not permit a grant of this application.⁵² Because a carrier must be recertified each year, we have the ability to review Hargray's proposals annually, as well as its past performance.⁵³ We agree with Hargray that telecommunications carriers' plans beyond two years are generally an educated guess.⁵⁴

We find that designation of Hargray's application will foster positive economic development in South Carolina. Companies considering locating to, or moving from, rural areas include the quality of wireless communications networks within their analysis. Improving and modernizing the state's wireless infrastructure will provide rural citizens with the ability to take advantage of new business opportunities.⁵⁵

We find that Hargray's designation will promote affordable telephone service because Hargray offers a local service rate plan that costs \$20 per month and provides unlimited local calling to all numbers located within three counties in South Carolina and sixteen counties in Georgia.⁵⁶

Hargray has made detailed commitments to provide high-quality service throughout the proposed service area for which it seeks designation.⁵⁷ The mobility of Hargray's wireless service will provide further benefits to consumers, such as access to emergency services in geographically isolated areas.⁵⁸ Hargray's designation as an ETC also will potentially allow its

⁵² Tr. 219.

⁵³ Tr. 193 at lines 15-18.

⁵⁴ Tr. 179 at lines 10-15.

⁵⁵ Tr. 50 at lines 7-18; Tr. 121 at lines 4-10.

⁵⁶ Tr. 41 at lines 17-22.

⁵⁷ See generally Hargray Application; 2006 Amendment at pp. 5-6; June 18 Letter; letter dated June 20, 2007, from William W. Jones, Jr. to Charles L.A. Terreni ("June 20 Letter"); Tr. 17 at lines 3-14; Tr. 47-48.

⁵⁸ See Tr. 121 at lines 11-22. The FCC and other states have recognized the benefit of wireless service as a public interest factor in ETC designations. See, e.g., *Corr Wireless Communications, LLC, Petition for Designation as an*

customers to be subject to fewer toll charges and provide customer access to premium services such as caller ID, voice call notification, short digit dialing, short messaging services, Internet browsing, content download, multi-media picture and large text file transfer and email to the wireless handset.⁵⁹

Hargray has committed to comply with the CTIA Consumer Code for Wireless Service.⁶⁰ It has also committed to comply with the FCC's rules set forth at 47 C.F.R. Section 54.202 and 54.209, consistent with this Commission's recent Order No. 2007-424 regarding this Commission's interim ETC standards for designation of ETC status.⁶¹ We find that these commitments to service quality will serve the public in Hargray's proposed ETC service area and assist the Commission in determining on a continuing basis the level of service quality being provided by Hargray.

Similar to the Gulf Coast states, South Carolina's position on the eastern seaboard makes it vulnerable to storms and hurricanes. As such, the availability of high-quality wireless service in the state is essential to providing for the health and safety of our citizens.⁶² Hargray's commitment to use support to expand its service area, increase redundancies, and improve the

Eligible Telecommunications Carrier in the State of Alabama, 21 FCC Rcd 1217, 1226, paras. 25-26 (2006) ("The mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. The availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities."); In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384 (Missouri PSC, May 13, 2007) at p. 12 ("Clearly, expansion of cell phone service would benefit consumers by giving them an additional option for phone service, by allowing them additional mobility, and by affording them increased safety while on the road or otherwise away from the end of a telephone wire."); In the Matter of the Application of Alltel Communications of Nebraska, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, Application No. C-3497 (Neb. PSC, March 7, 2006) at pp. 16-17.

⁵⁹ Tr. 46 at lines 5-9.

⁶⁰ 2006 Amendment at pp. 1-2; Tr. 18 at lines 5-8.

⁶¹ See 2006 Amendment; Tr. 53-56.

⁶² Tr. 49 at lines 15-19.

capacity of its wireless system will provide significant benefits to those rural consumers who depend on wireless service.⁶³ Hargray has demonstrated that its network requires improvements and its five-year plan sets forth detailed commitments to construct additional facilities designed to deliver the benefits set forth above. Because we have the ability to review Hargray's performance each year, we will be able to ensure that South Carolina's rural citizens see the benefits that Hargray has promised and that the Congress intended to deliver when it authorized competitive carriers.

While growth in the size of the federal USF is a major concern, it is a federal issue that must be addressed at the federal level. We would note this statement from the FCC regarding the acquisition of Alltel Corporation by Atlantis Holdings, LLC: "Although the [FCC] has not yet adopted the Joint Board's recommendation, this transaction implicates the Joint Board's recommendation."⁶⁴ We consider this to indicate that the FCC is indeed beginning to bring the growth in the federal USF under control.

On balance, therefore, we find that the advantages of designating Hargray an ETC in these rural and non-rural areas in South Carolina outweigh any disadvantages and as such, designation would serve the public interest.

As more fully explained below, we conclude that the designation of Hargray as an ETC in the rural and non-rural study areas identified in Exhibits B, C, and D to Hargray's original Application is in the public interest. The relevant Study Area designations are as follows:

240479 VERIZON SOUTH-SC
240506 UTC OF THE CAROLINAS

⁶³ See Tr. 121.

⁶⁴ See FCC Memorandum Opinion and Order in WT Docket No. 07-128 – *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent To Transfer Control of Licenses, Leases and Authorizations* at p.9

240512 BLUFFTON TEL. CO.

240523 HARGRAY TEL. CO.

The wire centers for each of the Rural ILECs not requiring service area redefinition are listed on Exhibit C of Hargray's Application and are shown on the map attached as Exhibit A to the Application. The wire centers for non-rural ILECs and the rural ILECs requiring service area redefinition are listed in Application Exhibits B and D, respectively. Specific wire center codes are as follows:

The wire centers for each of the Rural ILECs listed on Exhibit C of Hargray's

Application are:

HARGRAY TELEPHONE CO., INC.	HRVLSCXA	HARDEEVL
HARGRAY TELEPHONE CO., INC.	HLHDSCXA	HILTONHEAD
HARGRAY TELEPHONE CO., INC.	HLHDSCXB	HILTONHEAD
HARGRAY TELEPHONE CO., INC.	HLHDSCXC	HILTONHEAD
BLUFFTON TELEPHONE CO., INC.	BFTNSCXA	BLUFFTON
BLUFFTON TELEPHONE CO., INC.	BFTNSCAQ	MOSS CREEK

The wire center code for the Verizon South wire center (non-rural) listed on Exhibit B is:

Yemassee: YMSSSCXA

The wire center codes for the rural ILEC wire centers listed on Exhibit D of Hargray's Application are:

UNITED TELEPHONE CO. OF THE CAROLINAS	BUFTSCXA	BEAUFORT
UNITED TELEPHONE CO. OF THE CAROLINAS	ESTLSCXA	ESTILL
UNITED TELEPHONE CO. OF THE CAROLINAS	HMPNSCXA	HAMPTON
UNITED TELEPHONE CO. OF THE CAROLINAS	LRBYSCXA	LAUREL BAY

UNITED TELEPHONE CO. OF THE CAROLINAS	LWCNSCAA	LOW COUNTRY
UNITED TELEPHONE CO. OF THE CAROLINAS	RDLSCXA	RIDGELAND
UNITED TELEPHONE CO. OF THE CAROLINAS	STHLSCXA	ST. HELENA

Because Hargray requests ETC status in the entire study area of each of the rural telephone companies listed in Exhibit C, we are not concerned about the potential for creamskimming.⁶⁵ Conversely, because Hargray's service area differs from the study area of the rural incumbent LEC identified in Exhibit D we must perform a creamskimming analysis for these service areas. Hargray's CMRS licensed area differs from the Embarq study area and it will be unable to provide facilities-based service to that portion of Embarq's study area where it is not licensed to serve.⁶⁶ For the reasons explained below and consistent with the FCC's findings in its *Virginia Cellular Order* and the *Highland Cellular Order*, we find it appropriate to designate Hargray for an area less than the entire study area of Embarq because we conclude that such designation is unlikely to create creamskimming concerns.⁶⁷

We find that designation of Hargray as an ETC in certain wire centers in the Embarq study area does not raise concerns about creamskimming and therefore is in the public interest.⁶⁸ Our analysis of the population density of each of the affected wire centers reveals that Hargray will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are

⁶⁵ Because Hargray's requested service area includes the entire study area of these rural incumbent LECs, we do not have creamskimming concerns. See *ETC Report and Order*, *supra*, 20 FCC Rcd at 6392, para. 49 ("When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.")

⁶⁶ See Hargray Application at p. 14; Tr. 40 at lines 8-14.

⁶⁷ See *ETC Report and Order*, 20 FCC Rcd at 6392-95, paras. 48-53; *Virginia Cellular Order*, 19 FCC Rcd at 1578-580, paras. 32-35; *Highland Cellular Order*, 19 FCC Rcd at 6434-38, paras. 26-32.

⁶⁸ See 2006 Amendment at Appendix F.

other factors that define high-cost areas, a lower population density generally indicates a higher cost area.⁶⁹

The average population density for the Embarq wire centers for which we grant Hargray ETC designation is 73.9 persons per square mile and the average population density for the wire centers that Hargray is not proposing to serve is 78.2 persons per square mile.⁷⁰ Thus, the wire centers that Hargray will serve have a lower population density and likely higher per line costs than the wire centers that Hargray will not serve. We find such an ETC designation will not have the effect of creamskimming, and is therefore in the public interest.⁷¹

Redefinition of Embarq Service Area

In order to designate Hargray as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service area of the rural telephone company in accordance with section 214(e)(5) of the Act.⁷² Under section 214(e)(5), “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”⁷³ Under section 54.207(c)(1), either the

⁶⁹ See *Advantage Cellular Order*, 19 FCC Rcd at 20994, n.67, citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19628, para. 28 (2001), *recon. pending* (discussing Rural Task Force White Paper # 2 at <http://www.wutc.wa.gov/rtf/>).

⁷⁰ 2006 Amendment at Appendix F; Tr. 131 at lines 5-18.

⁷¹ See *Advantage Cellular Order*, 19 FCC Rcd at 20994, para. 22.

⁷² 47 U.S.C. § 214(e)(5).

⁷³ *Id.*

petitioner or the Commission must file a petition with the FCC seeking concurrence with the proposed redefinition.⁷⁴

When the Joint Board recommended that the FCC retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for creamskimming is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Act, in many respects, places rural telephone companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than the study area level.⁷⁵

We find that redefining Embarq's service area as proposed will not impose administrative burdens on Embarq because it will not require the company to determine its costs on any basis other than the study area level.⁷⁶ Moreover, as discussed above, we conclude that redefining the Embarq service area so that each wire center is a separate service area should not result in opportunities for creamskimming.⁷⁷

We also note that the redefinition of these service areas, and designation of Hargray as an ETC, will allow Hargray to provide services to the least densely populated areas at issue and thus Hargray is unlikely to compete with the incumbent LEC only in the lowest cost areas. Finally,

⁷⁴ 47 C.F.R. § 54.207(c)(1).

⁷⁵ See *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

⁷⁶ See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 44. Rather, the redefinition enables competitive ETCs to serve areas that are smaller than the entire incumbent LEC study area. *Id.*

⁷⁷ See *id.* at 1582-83, para. 42. We note that any future competitive ETC designation for the redefined service area would continue to require a finding that such designation is in the public interest, including an analysis of whether such designation would result in creamskimming.

we find no evidence that the proposed redefinition will harm Embarq because redefining the service area will not change the amount of universal service support that is available to Embarq.⁷⁸ Thus, consistent with prior rural service area redefinitions and with the recommendations of the Joint Board, we redefine the requested wire centers in the study area of Embarq as a separate service area.⁷⁹

Our decision to redefine the service area of Embarq is subject to the review and final agreement of the FCC in accordance with applicable requirements under section 54.207(c) of its rules. Accordingly, we direct Hargray to petition the FCC for concurrence with the redefinition set forth in its Application, as amended, and approved herein.⁸⁰ Upon the effective date of the agreement of the FCC with our redefinition of Embarq's the service area, our designation of Hargray as an ETC in areas served by Embarq shall also take effect. If, after its review, the FCC determines that it does not agree with the redefinition proposal herein, we will reexamine Hargray's Application with regard to redefining these service areas.

IT IS, THEREFORE, ORDERED THAT:

1. Hargray is designated as an ETC, as of the effective date of this order, in the requested areas served by the non-rural telephone company Verizon South, Inc. as listed in Exhibit B to the Application.

2. Hargray is designated as an ETC, as of the effective date of this order, for the entire study area served by the rural telephone companies Hargray Telephone Company, Inc., and Bluffton Telephone Company, Inc., as listed in Exhibit C to the Application.

⁷⁸ See *id.* at 1583, para. 43.

⁷⁹ See *Federal State Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 23532, 23547, para. 37 (2002) ("RCC Alabama ETC Designation Order").

⁸⁰ We encourage Hargray to consult with the Office of Regulatory Staff as to the form of the petition.

3. Subject to the FCC's agreement with our redefinition of service areas, Hargray is designated as an ETC for the Embarq wire centers listed in Exhibit D to the Application. Hargray is directed to petition the FCC for concurrence with the redefinition of the service area of Embarq.

4. Hargray shall abide by the FCC's ETC designation rules set forth at 47 C.F.R. Section 54.202 and 54.209, consistent with Commission Order No. 2007-424.

5. Hargray shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.

6. All federal USF funding received as a result of this Order will be used to support the expansion and improvement of services in high cost areas and provide Lifeline credits for low income customers.

7. Concurrent with the filing of this Order, the Commission will file a certification with the FCC and the Universal Service Administrative Company "within 60 days of the effective date" of this Order, as required by 47 C.F.R. Sections 54.313 and 54.314, stating that Hargray will use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." The certification shall specify that it covers the time period from the effective date of this Order through the end of the calendar year.

8. Should the Commission determine Hargray has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules, or regulations, the Commission may deny Hargray's annual recertification as an ETC.

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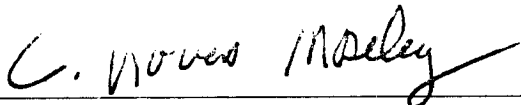
9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)